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## Policy and Procedures



# APPEALING ORDERS ISSUED UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT



Ontario  
Ministry of  
Labour

Hon. William Wrye  
Minister



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## I. INTRODUCTION

The appeals procedure has been developed in order to facilitate appeals made pursuant to section 32 of the Occupational Health and Safety Act. The following statistics indicate that there is an ever-increasing number of appeals being initiated:

1984	-	56 appeals
1985	-	108 appeals
1986	-	130 appeals

This policy manual has been formulated in order to ensure that the appeals process functions smoothly and expeditiously. Some delays between the launching of an appeal and the hearing are inherent in any appeal process. However, it is obvious that delays ought to be minimized and efforts ought to be made to resolve the issues under appeal as expeditiously as possible. In addition, it is preferable that the parties themselves resolve the issues under appeal prior to the hearing if at all possible rather than resort to the adjudicative process. The difficulty is to strike a balance between these two goals, and it is hoped that the appeals procedure will facilitate this process.

The appeals procedure sets out guidelines, which are not binding statements of law. Over time, the procedure may be extended to reflect the experience of the Director of Appeals in dealing with specific situations and may be amended from time to time if any of the procedure is deemed to be in error. The procedure is intended to assist appellants and parties to the appeal to present their appeals and is not intended to restrict the discretion of the Director of Appeals in interpreting the procedure or hearing the appeals.

Appeal proceedings are initiated under section 32 of the Occupational Health and Safety Act (hereinafter referred to as "the Act"). Under this section an employer, constructor, owner, worker or trade representative may appeal an order or a decision made by a Ministry inspector where one of the parties disagrees with the order or decision of the inspector or disagrees with the decision made by an inspector not to issue or make a decision or order.



Comments contained in a report are not subject to appeal since they do not come within this section of the Act. In addition, the reports themselves produced by Ministry inspectors are not subject to appeal, but only the orders or decisions or failures to issue orders or decisions arising therefrom.

The appeal hearings are carried out pursuant to the Statutory Power Procedures Act R.S.O. 1980, c. 484. This Act provides for a number of fundamental rights, which include the right to:

- receive adequate notice of proceedings
- be represented by counsel
- call evidence
- cross-examine witnesses
- make closing submissions or argument
- request the tribunal to summons witnesses

The Director of Appeals is an independent adjudicator who reports to the Deputy Minister and is not a member of the Occupational Health and Safety Division. This administrative structure serves to maintain the independence of the Director and, therefore, of the decisions. Decisions by the Director of Appeals are final and the Director may substitute her/his findings for those of the inspector who made the decision or order. The Director may rescind or affirm the order or make a new order in substitution therefor.





## II. PROCEDURE

### A. Who May Appeal?

Section 32 (1) of the Act states that any employer, constructor, owner, worker or trade union which considers himself or itself aggrieved by any order made by an inspector under this Act may appeal the order. Section 32 (5) extends the definition of "order" to include a decision or the refusal to make an order or decision.

### B. When Is the Appeal to Be Made?

Section 32 (1) provides that the appeal is to be made within 14 days of the making of the order or decision. Any appeals made outside this period of time are outside the appeal period. The Director of Appeals does not have jurisdiction under the Act to extend the appeal period. The appeal must be received by the Regional Office or the Director of Appeals within 14 days of the date of the order or decision.

### C. How to Appeal?

Section 32 (2) of the Act specifies that an appeal may be made in writing, orally or by telephone. The appeal may be taken in a regional office, but a copy of the Notice of Appeal or Report of Telephone Call is to be forwarded to the Director of Appeals' office immediately. Whether the appeal is made personally, by telephone or in writing, the following information is to be recorded by division staff:

- the date and time that the appeal was received;
- the name, address and telephone number of the person receiving the Notice of Appeal;
- the name, address and telephone number of the person initiating the appeal;
- the name, address and telephone number of the appellant;
- the name, address and telephone number of either the union representative or the health and safety representative or both;
- the name, address and telephone number of the representative of the employer;



- the name, address and telephone number of the inspector who issued the order or decision;
- the report number and the number of the order(s) being appealed;
- the date that the order or decision was made;
- the nature of the order or decision being appealed;
- the reason (if known) for the appeal.

A draft Appeal Information form has been included in Appendix I for reference purposes. The division official receiving the information noted above should forward it to the Director of Appeals, 14th Floor, 400 University Avenue, Toronto, Ontario, M7A 1T7; telephone number, (416) 963-3047.

The completed information form, attached to a covering memorandum indicating that an appeal has been commenced and that the appellant has been asked to forward written confirmation of appeal to the Director of Appeals, should be given to the Director of Appeals within five working days of its receipt. The division official should inform the appellant that the information received will be forwarded to the Director of Appeals. In order for all parties to be kept informed throughout the appeal process, it is very important that the information sheet be filled out fully and correctly.

The division official receiving the Notice of Appeal from the appellant should request the appellant to put the Notice of Appeal in writing and, along with the grounds for the appeal, forward it to the Director of Appeals.

The director of the line branch should inform the Ministry of Labour Legal Branch of the appeal in order to have counsel assigned.

**D. Parties to the Appeal**

Section 32 (3) of the Act allows the Director of Appeals to specify other parties to the appeal besides the appellant and the inspector. Usually, there will be three parties to an appeal: management, labour and the Ministry of Labour inspector who issued the relevant order or decision.





Where there is a union in the workplace, the union representative may be made a party to the appeal. Where there is no union and where there is a joint health and safety committee or a worker representative, the worker on the joint health and safety committee or the worker representative may be made a relevant party.

In order to be specified as a party to the appeal, the person must come within the classes specified in the Act and must be aggrieved by the order or decision. The person launching the appeal must state in what capacity he/she is filing the appeal of the order or decision.

**E. Acknowledgement of Appeal**

Every Notice of Appeal will be acknowledged in writing by the Director of Appeals within 10 working days of its receipt by the Director of Appeals or her/his designate. The acknowledgement will include the name of the person who will arrange meetings in order to attempt to resolve the outstanding issues under appeal. In addition, the acknowledgement will state that if the resolution effort is unsuccessful, an appeal hearing will be convened. The original acknowledgement will be sent to the appellant. Copies of the acknowledgement will be sent to the director of the relevant line branch, the person attempting to resolve the matter prior to an appeal hearing and to the other parties to the appeal, including the inspector. Once the director of the line branch receives a copy of the acknowledgement letter, she/he will trigger the effort to resolve the matter.

**F. Resolution of the Issues Prior to the Appeal Hearing**

Mediation is not expressly provided for in the Occupational Health and Safety Act. However, it is preferable for the parties themselves to agree on an appropriate order in the specific circumstances and to agree upon an appropriate method for implementing the order or decision. Where all the parties concerned agree, the branch directors will be requested by the Director of Appeals to make every reasonable effort to have the appeal settled prior to the formal hearing.



When responding to the Notice of Appeal via the acknowledgement letter, the Director of Appeals will inform the appellant that she/he has asked an official within the Occupational Health and Safety Division to meet with the parties in an effort to bring about a mutually acceptable solution. The letter will indicate that the resolution effort will take place without prejudice to the appellant's right to continue the proceedings, and, if the matter cannot be resolved in this manner, a formal appeal hearing will be convened. Copies of the letter will be sent to all parties to the proceedings.

The director of the line branch will determine who should conduct the resolution effort.

The resolution process should commence immediately upon notification to the appellant by the Director of Appeals that such efforts have been requested. In any event, all resolution efforts are to be completed within six weeks of the date of the letter of acknowledgement from the Director of Appeals to the appellant. If there is any extraordinary reason why the resolution process must extend past the six-week deadline, the request for an extension of time should be made directly to the Director of Appeals. The Director of Appeals retains the discretion to decide, at any time during the resolution process, that the efforts in this regard are unduly delaying the appeal process, and she/he may decide to schedule the formal appeal hearing. Upon completion of the resolution effort and, at the latest, by six weeks from the date of the letter of acknowledgement, the line branch director will send a report to the Director of Appeals indicating the results of the resolution effort, i.e. whether the appeal has been withdrawn or whether the appeal hearing is to be scheduled.

If the Director of Appeals has not received a report from the Ministry of Labour official by the six-week deadline, she/he will request a status report including reasons for the delay. The Director of Appeals will then decide whether to extend the time for mediation efforts or to schedule the appeal hearing.





If the resolution effort is successful, a report to this effect should be sent to the Director of Appeals. The Ministry official responsible for the resolution effort should also request the appellant to write to the Director of Appeals indicating that the appeal has been successfully resolved and that the appellant wishes to withdraw the appeal. When this letter of confirmation has been received, the Director of Appeals will provide copies to all other parties to the proceeding.

If the resolution effort is unsuccessful, the Ministry official should write to the Director of Appeals to indicate that the appellant wishes to proceed with the appeal. The record of the resolution effort should be kept in the company file, but should not be forwarded to the Director of Appeals.

**G. Outstanding Appeals**

If the Director of Appeals has agreed to an extension of the resolution effort for a period beyond the six weeks, the line branch director should obtain a two-weekly status report on the resolution effort and provide a brief written summary to the Director of Appeals. This report should indicate approximately how long it will take to resolve the matter short of the appeal hearing.



### **III. THE APPEAL HEARING**

#### **A. Scheduling the Hearing**

The Director of Appeals will schedule a date for the hearing. Although it is desirable that all parties agree to a date for the hearing, it is not feasible to canvass appropriate dates and accommodate all parties.

Appeal hearings will be scheduled with at least one month's notice to be given to all parties. Should all parties agree, a hearing date may be scheduled with less than one month's notice.

The hearing will be scheduled in a location to be determined by the Director of Appeals. In most circumstances, the most convenient forum will be chosen by the Director of Appeals to accommodate all the parties to the appeal.

#### **B. Representation**

All parties to the appeal have a right to be represented by legal counsel or an agent, but the parties may participate at the hearing without representation by counsel. The Legal Branch of the Ministry of Labour may provide counsel to the inspectors.

#### **C. Notice of Hearing**

All parties and representatives will be informed by Notice of Hearing of the date of the appeal hearing. The Notice of Hearing will include the date, time, location and purpose of the hearing, the statutory authority for the hearing and a statement that, if the party notified does not attend the hearing, the hearing can proceed in her/his absence. The Notice of Hearing will be sent by the Director of Appeals to all parties to the appeal or their representative. The Notice of Hearing will also state that all parties planning to submit written evidence during the hearing must provide at least four copies for the use of the tribunal and other parties.





In hearings that may involve expert evidence or expert witnesses, the parties shall submit to the Director of Appeals, a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony, at least 10 days before the scheduled date of hearing. The Director of Appeals will forward copies of each party's submissions to the other parties in preparation for the hearing.

**D. Pre-Hearing Meetings**

In cases where there may be numerous parties or complex issues that may require expert testimony or numerous witnesses, it may be appropriate for the Director of Appeals to arrange for a preliminary meeting of all the parties. At this meeting, the parties can expect to discuss the format of the hearing, identify the specific issues under appeal, determine if an agreed statement of facts will be appropriate, arrange for the exchange of expert reports or deal with any other relevant matter that may affect the conduct of the hearing.

**E. The Hearing**

The Director of Appeals will begin the hearing with some opening remarks about the purpose of the hearing and the sequence in which the parties will present evidence and cross-examine witnesses. Following the Director's introductory statement, the Director may permit opening remarks to be made by the appellant and any other parties to the proceedings. The appellant will then put forth evidence through the calling of witnesses and the presenting of documentation, if any. Cross-examination will follow by the various parties. In all cases, all parties will have the opportunity to present evidence in a manner similar to the appellant's and all parties will be permitted to cross-examine all witnesses. The order of cross-examination will depend on the specifics of each case.



Although the primary responsibility to elicit facts to assist the Director in rendering her/his decision rests with the parties to the appeal, the Director may, where necessary, question the parties who are in attendance at the hearing. The Director may also question parties in order to minimize any disadvantage that could be suffered by an unrepresented party who is not familiar with the law.

Closing statements may be made by the parties if they so wish.

Hearings are open to the public. Cameras and other recording equipment are not permitted inside the hearing room.

**F. Evidence and Inspection**

The Director may admit into evidence any oral testimony, document or other thing that is relevant to the subject matter of the proceedings.

If the Director considers it desirable to visit a particular workplace in order to become familiar with the machinery, equipment or work processes that are material to the appeal hearing, a tour of such workplace or equipment will take place as part of the appeal proceedings.

**G. Record of Proceedings**

The Director of Appeals will compile a record of any proceedings in which a hearing is held. This record will include:

- the Notice of Appeal or any other document by which the proceedings are commenced, including a memorandum of telephone conversation;
- a copy of the Notice of Hearing along with a list of parties who attended the hearing and the parties to whom the notice was sent;
- any intermediate orders made by the Director (e.g. rulings made about extension of time, the addition of parties or the suspension of an order pending the disposition of the appeal);





- all documentary evidence filed with the Director;
- the decision of the Director, with reasons where they have been given.

#### H. The Director's Decision

The Director's decision may be given immediately following the parties' final submissions. However, if the Director wishes to reserve the decision, the hearing will be concluded and the decision issued at a later date. The decision will be put in writing and will be sent to all parties or their representatives by first class mail as soon as practicable after the hearing. The Director's decision will not be available to anyone until all the parties to the appeal are apprised of the outcome of the hearing.

Copies of the decisions will be placed in the Ministry Library, 10th Floor, 400 University Avenue.



IV. **STAYING OF ORDERS OR DECISIONS PENDING THE APPEAL HEARING**

Section 32 (7) of the Act permits a Director to suspend the operation of an order or decision that has been appealed pending the disposition of the appeal. In order to maintain the impartiality of the Director of Appeals prior to the appeal hearing, the director of the line branch that issued the order will make the determination of whether or not an order or decision should be suspended pending the appeal hearing.

If a party to an appeal wishes to have an order or decision suspended, the party is to send a written request for suspension, including the reasons for the request, to the director of the line branch that issued the order. Where there is an urgent need for a decision to be made, the request may be transmitted in person or over the telephone to the director of the line branch or his/her designate. The director of the line branch will consider the request and formulate his/her decision.

The decision to suspend the order or decision is made without prejudice to the appellant's right to subsequently pursue his/her application under section 32 (7) and to continue with the appeal if desired.

When a decision is made to suspend an order or decision, the director of the line branch will send a copy of the written decision to all parties and to the Director of Appeals.



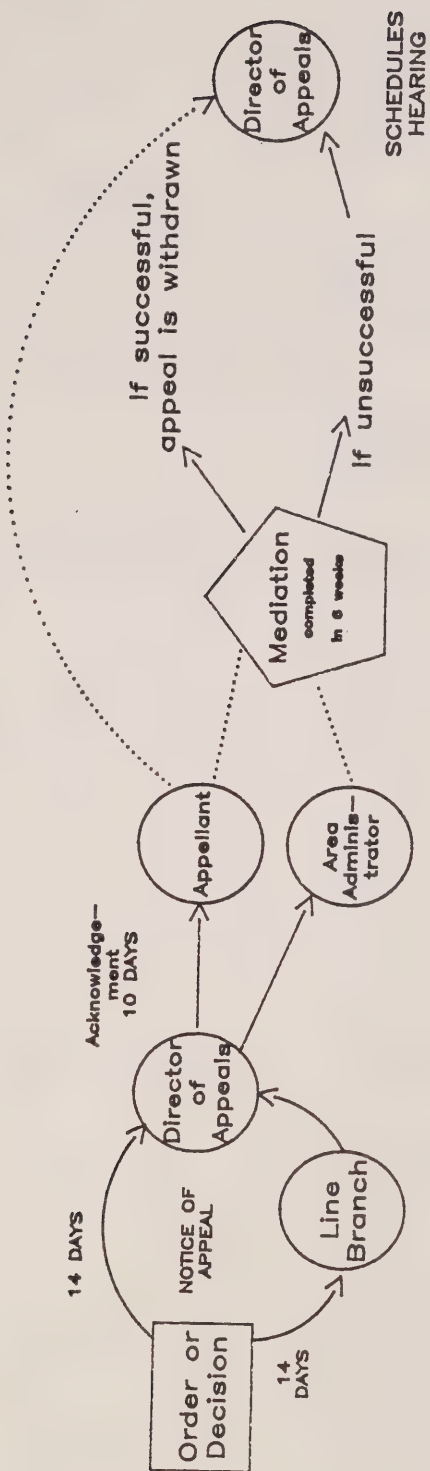
V. **PROSECUTIONS**

During the appeals process, a decision may be made by the line branch director to recommend prosecution based on the subject matter of the appeal. When forwarding the matter to the Legal Branch, the director of the line branch should advise the director of the Legal Branch that an appeal has been launched. If the solicitor from the Legal Branch wishes to determine the status of the appeal hearing in order to schedule the appropriate court appearance with regard to the prosecution, the Legal Branch solicitor may request a status report on the appeal from the Director of Appeals. The Director of Appeals should not be involved in any other aspect of the prosecution.





# APPEAL PROCESS







## Appeal Information

Per: Section 32 of the  
Occupational Health and Safety Act

		Date Information Received	Time Received
Information Received By (Name)		Appeal Initiated By (Name)	
Office		Address	
Branch	Telephone		Telephone
Appellant's Name		Health and Safety Representative	
Address		Address	
	Telephone		Telephone
Union Representative		Employer Representative	
Address		Address	
	Telephone		Telephone
Order(s) Issued and/or Decisions Taken By		Branch	
Office			Telephone

### Report Number(s) and Order Number(s) Being Appealed

Report/Order No.	Date

Signature of Order or Decision Being Appealed

Reason for Appeal

Return to:

Director of Appeals, Office of the Deputy Minister, Ministry of Labour, 400 University Ave, Toronto, Ontario M7A 1T7  
Telephone: (416) 963-3047







